

**Sate of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

LOON LAKE PROPERTY OWNERS
ASSOCIATION, LOON LAKE DEFENSE
FUND, WILLIAM SHAWL, and JANICE
SHAWL, LARSON BEACH NEIGHBORS, and
JEANIE WAGENMAN

Petitioner,

DEPARTMENT OF ECOLOGY,

Intervenor,

v.

STEVENS COUNTY,

Respondent.

Case No. 03-1-0006c

AMENDED SECOND ORDER ON
COMPLIANCE REGARDING MOTION
FOR RECONSIDERATION

Note: Motion for Reconsideration

Upon receipt of the Respondent's Motion for Reconsideration, its attachments, and the Petitioner's response, the Hearings Board again reviewed the complete record, the briefing of the parties and the Respondent's objections to the Second Order on Compliance. The Hearings Board finds merit in one of the Respondent's objections and have therefore reexamined the record and briefing de novo, insuring that there is no shifting of the burden of proof to the County. While much of the Order remains the same, changes were made to reflect the Hearings Board's adherence to the statutory mandate presuming the validity of the actions of the County and requiring the Petitioners to bear the burden of proof to show that the County's actions were "clearly erroneous" before a finding of non-compliance can

1 be found. The Order is further modified to reflect the finding that the Petitioners did not
2 carry their burden of proof regarding the Common Loon.

3 I. SUMMARY OF DECISION

4 The Eastern Washington Growth Management Hearings Board (Board), in its Order
5 on Compliance issued on October 15, 2004, determined that Stevens County had not
6 responded to the nominations to designate Habitat and Species of Local Importance and
7 found the County out of compliance on this issue.

8 The Board finds the County is no longer out of compliance
9 on the bulk of the issues raised in the subject petitions
10 because the Petitioners have either not objected to the new
11 language or failed to carry their burden of proof. However,
12 the Board continues to find the County out of compliance
13 due to their failure to adequately respond to the previous
14 nominations of species and habitat of local importance made
15 prior to the adoption of Appendix B in amended Title 13.

16 The Board ordered Stevens County to "respond by November 22, 2004, to the
17 nominations of species and habitat of local importance in the Loon Lake watershed, which
18 were submitted under Title 13 prior to its amendment and addition of Appendix B."

19 The Petitioners presented Best Available Science (BAS) supporting the nominations
20 for habitat (wetlands on Loon Lake) and species of local importance (Red-necked Grebe and
21 Common Loon). The Petitioners material, data and presentation were given to the Board of
22 County Commissioners (BOCC) at a public hearing held at Loon Lake on January 24, 2005.
23 Additional testimony was given by the Petitioners and other citizens at another hearing in
24 Colville, Washington on January 31, 2005. On March 7, 2005, the BOCC held a "closed"
25 (BOCC meeting minutes, 3-15-05) final hearing to summarize the Staff report, give BOCC
26 comments and to vote to deny the nomination requests. On March 22, 2005, the Board of
County Commissioners adopted Findings of Fact (Resolution #41-2005) denying the
requests received to designate certain habitat at Loon Lake and two species, the Common
Loon and Red-necked Grebe, as Habitat and Species of Local Importance.

1 The County filed their motion for reconsideration on May 20, 2005. With that motion
2 the County included portions of the record reflecting the lack of sightings of the Common
3 Loon in and around Loon Lake in the past 10 years. (Washington State Status Report for
4 the Common Loon – Washington State Department of Fish and Wildlife, Report February
5 2000.)

6 After reconsideration and further review, the Board finds the record supports the
7 County's denial of the Common Loon as a species of Local Importance. Further, the Board
8 finds a lack of evidence from the Petitioners supporting the inclusion of the Common Loon
9 as a Species of Local Importance.

10 The Board however has determined that the Petitioners have carried their burden of
11 proof and have shown that Stevens County has not identified and protected the nominated
12 habitat and the Red-necked Grebe as a specie of local importance as required by the GMA.
13 The record, including best available science [as required by RCW 36.70A.172(1)] and other
14 local factors, support the Petitioners nomination of the Loon Lake wetlands as the habitat of
15 Local Importance and the Red-necked Grebe as a Specie of Local Importance. The Board
16 finds Stevens County in continued non-compliance for failure to protect Fish and Wildlife
17 Habitat Critical Areas (FWHCA) as required by the GMA RCW 36.70A.060(2) and to respond
adequately to the nomination of certain species, specifically the Red-necked Grebe, and
habitat at Loon Lake.

18 II. PROCEDURAL BACKGROUND

19 On February 2, 2004, the Board issued an Order consolidating EWGMHB Case Nos.
20 00-1-0016, 03-1-0003 and 03-1-0006 under new Case No. 03-1-0006c.

21 On February 10, 2004, the Board issued its Final Decision and Order in Case No. 03-
22 1-0003.

23 On March 17, 2004, the Board refused to reconsider its order or issue an Amended
24 Final Decision and Order.

25 On May 17, 2004, the Board received Respondent, Stevens County's Motion to
26 Extend Time requesting an additional 30 days to bring themselves into compliance with the

1 Board's Final Decision and Order dated February 10, 2004. Stevens County was to be in
2 compliance by June 9, 2004.

3 On October 15, 2004, the Board issued its Order on Compliance.

4 On November 17, 2004, the Board received a Motion to Extend Time and Affidavit of
5 Peter G. Scott in Support of Motion to Extend Time requesting an additional 45 days to
6 bring themselves into compliance.

7 On November 22, 2004, the Board asked that any objections to such continuance be
8 filed with the Board by December 3, 2004. The Petitioners LLPOA and Larson Beach
9 Neighbors and Jeanie Wagenman notified the Board that they do not object to the
10 additional 45 days.

11 On December 14, 2004, the Board issued its Order on Motion to Extend Time.

12 On February 11, 2005, the Board received a request for Compliance Hearing from
13 Petitioners' in the above matter.

14 On February 15, 2005, the Board issued its Order Setting Compliance Hearing and
15 Briefing Schedule.

16 On March 14, 2005, the Board received a request from Petitioner Jeanie Wagenman
17 asking for additional time to file Petitioner's Compliance Brief because materials pertinent to
18 briefing were unavailable.

19 On March 15, 2005, the Board received a letter from Respondent's attorney Peter
20 Scott, advising the Resolution of the Decision would be available to Petitioner on March 22,
21 2005.

22 On April 14, 2005, the Board held a telephonic compliance hearing. Present were
23 Presiding Officer, John Roskelley, and Board Members Judy Wall and Dennis Dellwo. Present
24 for Petitioners were Jeanie Wagenman, Mr. and Mrs. Shawl, and Bruce Erickson. Present for
25 Respondent were Peter Scott and Lloyd Nickel.

26 On May 20, 2005, the County filed a Motion to Reconsider. On May 25, 2005, the
Board received a response to the Motion for Reconsideration from Petitioner Jeannie
Wagenman.

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III. STANDARD OF REVIEW

Comprehensive plans and development regulations (and amendments thereto) adopted pursuant to the Growth Management Act ("GMA" or "Act") are presumed valid upon adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act.

The Washington Supreme Court has summarized the standards for Board review of local government actions under Growth Management Act. It was stated:

The Board is charged with adjudicating GMA compliance, and, when necessary, with invalidating noncompliant comprehensive plans and development regulations. RCW 36.70A.280.302. The Board "shall find compliance unless it determines that the action by the state agency, county or city is clearly erroneous in view of the entire record before the county, or city is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). To find an action "clearly erroneous" the Board must be "left with the firm and definite conviction that a mistake has been committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

King County v. Central Puget Sound Growth Management Hearings Board, 142 Wn.2d 543, 552, 14 P.3d 133, 138 (2000).

The Board will grant deference to counties and cities in how they plan under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated, "local discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent with the requirements and goals of the GMA.'" *Thurston County v. Cooper Point Association*, 108 Wn.App. 429, 444, 31 P.3d 28 (2001).

1 The Board has jurisdiction over the subject matter of the Petition for Review. RCW
2 36.70A.280(1)(a).

3 IV. ISSUES PRESENTED

4 Did Stevens County "adequately respond" to nominations of species and habitat of
5 local importance as ordered by the Eastern Washington Growth Management Hearings
6 Board as previously stated in the Board's Final Decision and Order? FDO at 25.

7 V. ARGUMENT, DISCUSSION AND ANALYSIS

8 The Parties Positions:

9 Petitioners, Larson Beach Neighbors and Jeanie Wagenman, contend that the
10 Respondent, Stevens County, has failed to adequately protect nominated species and
11 habitat of local importance, specifically the Common Loon and Red-necked Grebe as species
12 and the three Loon Lake wetlands as habitat.

13 Petitioners provided expert testimony and BAS documents to prove to the County
14 that the Common Loon and Red-necked Grebe should be listed as species of local
15 importance and the wetlands associated with Loon Lake should be designated habitat of
16 local importance. On behalf of the designation, the Petitioners provided expert written and
17 oral testimony, scientific studies and numerous papers to prove the nominations of the
18 Common Loon and Red-necked Grebe, two species of local concern due to their population
19 status and their sensitivity to habitat manipulation, were necessary to enhance protection
20 for them as species of local importance. Compliance Briefing Attachments A, B, C, D, E, F,
21 G, H, I, R, S, T, U, Z, AA.

22 In addition, the Petitioners provided written testimony and Best Available Science on
23 behalf of the nomination of the wetlands at Loon Lake as habitat of local importance. They
24 proved the wetlands associated with Loon Lake include the Common Loon and Red-necked
25 Grebe, two species with a "... seasonal range or habitat element with which a given species
26 has a primary association, and which, if altered, may reduce the likelihood that the species
will maintain and reproduce over the long-term. ...These might also include habitats that
are of limited availability or high vulnerability to alteration, such as cliff, talus and

1 wetlands." Compliance Briefing Attachments A, B, C, D, E, F, G, H, I, R, S, T, U, Z, AA. WAC
2 365-190-030(9).

3 The Petitioners also contend that the Board has already addressed the issue of
4 designation of habitats and species of local importance in their Final Decision and Order
5 (FDO) of February 10, 2004 (03-1-0003) page 25 and in their Order of Compliance, October
6 15, 2004. They quote the Board's findings in both Orders. Petitioners' Compliance Briefing p.
6 6. They contend the County has not followed the Board's Orders.

7 The Petitioners detailed the reasons for the nominations and what was proposed.
8 Relying on experts and BAS information, the Petitioners asked the County to protect the
9 Red-necked Grebe by requiring moving watercraft to remain at least a distance of 150 feet
10 from nesting grebes and that a minimum 300-foot buffer no-wake speed zone is placed
11 around the nesting sites. Other suggestions supportive of wildlife were also presented.

12 The Petitioners contend that the County's denial of the nominations of habitat and
13 species of local importance failed to have the needed reasoned analysis, findings and facts.
14 They contend the BOCC denied the nominations without using a reasoned process, analysis
15 and BAS, which is required by the GMA, to support their decision. The Petitioners quote the
15 Board in 03-1-0003:

16 "Stevens County must, as affirmed in WEAN, make a reasoned analysis on the
17 record." EWGMHB 03-1-0003, FDO 2/10/03, p. 25.

18 They also cite another EWGMHB Order in *Save our Butte Save our Basin*:

19 "Because Board decisions must be based on the record, [RCW 36.70A.290 (4)]
20 it is helpful to both the Board and the citizens if local governments show their
21 work and indicate the parts of the record upon which they have relied...It
22 involves a reasoned discussion of the issue in question, the selection of a
23 choice that meets the minimum requirements established by the Growth
24 Management Act and is supported by the record." *Save our Butte Save our
25 Basin, et al v Chelan County*, EWGMHB 94-1-0015 CHO 1/30/95.

26 The Petitioners also use a Western Washington Growth Management Board decision:

1 "In order to achieve compliance, the County must make a reasoned analysis,
2 on the record, including best available science and other local factors, and
3 take official substantive action on WEAN's nominations by 1/31/01." *Island*
4 *County Citizens' Growth Management Coalition v Island County*; WWGMHB 98-
5 2-0023c, CO 10/12/00.

6 The Petitioners respond in their Compliance Reply Brief to the BOCC Findings of
7 Fact, Resolution 41-2005, citing specific testimony, written letters or BAS to dispute each
8 finding or statement. They also answer specific statements made by each County
9 Commissioner and any discrepancies in the staff report. Petitioners Compliance Briefing, p.
10 10-24.

11 The Petitioners request the Board find the County out of compliance by failing to
12 properly respond to the nominations of habitats and species of local importance, that the
13 nominations of wetlands around Loon Lake be designated habitat of local importance, that
14 the Common Loon and Red-necked Grebe be designated as species of local importance and
15 that the Board set a time limit to achieve compliance.

16 **Second Petitioners Position:**

17 Petitioners, Loon Lake Property Owners Association, Loon Lake Defense Fund and
18 William and Janice Shawl, also request the Board find Stevens County out of compliance
19 with the requirements of the GMA for failure to list the nominated Common Loon and the
20 Red-necked Grebe and three (3) wetlands at Loon Lake as species and habitat of local
21 importance and to take adequate measures to protect them.

22 They rely on RCW 36.70A.060(2) which provides that every county "shall adopt
23 development regulations that protect critical areas...". Critical areas are defined by RCW
24 36.70A.030(5)(c) as areas that include "fish and wildlife habitat conservation areas
25 (FWHCA)." WAC 365-190-080(5)(a)(ii) provides that FWCHA include "habitats and species
26 of local importance." Stevens County is under a GMA affirmative duty and requirement to
protect habitats and species of local importance.

1 The Petitioners contend that "habitats", "species" and "local importance" are defined
2 terms (LLPOA Compliance Brief, pg. 2-3) and "habitats of local importance" is also defined
3 under WAC 365-190-030(9). According to the Petitioners, the record, which includes BAS
4 and testimony from experts, shows that Stevens County's decision not to list the Common
5 Loon and Red-necked Grebe and three Loon Lake wetlands was clearly erroneous in light
6 of the entire record. The Record fails to contain evidence to rebut the fact of a primary
7 association of the two species with Loon Lake. There is little or no evidence to show that
8 the Loon Lake wetlands are not breeding habitat, winter range and movement corridors for
9 the nominated species. There is nothing in the Record to rebut the fact that these
10 nominated wetlands exist and the fact that a very large amount of alteration to them has
11 occurred and continues to occur under Stevens County stewardship.

12 The Petitioners contend most, if not all, Stevens County's Findings of Fact are
13 irrelevant to the denial of the habitat and species of local importance nomination (HSLI).
14 (BOCC Resolution No. 41-2005, LLPOA Petitioners Compliance Brief, Attachment 1).

15 The Petitioners contend, by denying the HSLI nominations of the Common Loon and
16 Red-necked Grebe and the three wetlands at Loon Lake, Stevens County failed to provide
17 for Fish and Wildlife Habitat Critical Areas (FWHCA) as required by GMA.

18 **Respondent's Position:**

19 The Respondent, Stevens County, contends the Petitioners are not challenging the
20 County's response, but the merit of the County's decision, which they believe is not before
21 the Board. They believe the Board should find Stevens County in compliance for following
22 the process, regardless of the outcome.

23 The Respondent contends that the sole issue for consideration is "whether the
24 County has responded to the citizens' requests to designate species and habitat of local
25 importance". They also note that the Petitioners do not assert the County failed to provide
26 an adequate opportunity for public comment.

The Respondent contends that they have complied with the Board's Order to
respond and has done so in a manner that is consistent with the process set forth in the

1 Hearings Board's letter of January 3, 2005. They conclude that the County has responded
2 to citizen requests to designate certain species and habitat of local importance and that the
3 merits of the County's decision are not before the Hearings Board.

4 Thus, the Respondent contends that the Board should rule that the County has
5 complied with the Order on Compliance and denies the requested relief set forth in
6 Petitioner's briefs.

7 Respondents, in their Motion to Reconsider, included portions of the record reflecting
8 the lack of sightings of the Common Loon in and around Loon Lake in the past 10 years.
9 (Washington State Status Report for the Common Loon – Washington State Department of
10 Fish and Wildlife, Report February 2000.)

11 **Board Discussion:**

12 The Growth Management Act provides that: On or before September 1, 1991, each
13 county, and each city, shall designate where appropriate: (d) critical areas. RCW
14 36.70A.170(d). In designating and protecting critical areas under this chapter
15 [36.70A.172(1)], counties and cities shall include the best available science in developing
16 policies and development regulations to protect the functions and values of critical areas.

17 RCW 36.70A.060(2) provides that every county shall adopt development regulations
18 that protect critical areas. The definition of "critical areas" includes "fish and wildlife habitat
19 conservation areas" (FWHCA) RCW 36.70A.030(5)(c). WAC 365-190-080(5)(a)(ii) provides
20 that FWCHA include "habitats and species of local importance."

21 WAC 365-190-030(19) defines "species of local importance" as:

22 "Species of local importance are those species that are of local concern due to
23 their population status or their sensitivity to habitat manipulation or that are
24 game species."

25 WAC 365-190-030(9) defines habitats of local importance as:

26 "Habitats of local importance include a seasonal range or habitat element with
which a given species has a primary association, and which, if altered, may
reduce the likelihood that the species will maintain and reproduce over the
long-term. These might include areas of high relative density or species

1 richness, breeding habitat, winter range, and movement corridors. These
2 might also include habitats that are of limited availability or high vulnerability
to alteration, such as cliff, talus and wetlands."

3 The County must make a "reasoned analysis on the record, including best available
4 science and other local factors" in determining whether or not a habitat or species should
5 be designated as habitat or species of local importance. *Island County Citizens Growth*
6 *Management Coalition v. Island County (supra)*. The Growth Management Act requires the
7 record to include best available science in developing policies and development regulations
8 to protect the functions and values of critical areas, which habitats and species of local
9 importance are an important part. RCW 36.70A.172(1). There is no merit to the County's
10 argument that because the Board declined to rule on the issue of the Hearings Examiner
11 brought forth by the County during the compliance hearing that the Board does not retain
12 jurisdiction over the methodology used by the County to reach its decision. The Board's
13 decision must be made with all the information available, which in this case was after the
County made its final decision on the nominations.

14 The Board previously addressed the "response" issue in its Final Decision and Order
15 in Case No. 03-1-0003 issued on February 10, 2004.

16 "the County must make a reasoned analysis on the record, including best
17 available science and other local factors, and take official substantive action
18 on (WEAN's) nomination." ...Stevens County must as affirmed in WEAN make
19 a reasoned analysis, on the record, including best available science and take
20 official substantive action on the nominations. To fail to respond is clearly
erroneous and a failure to designate and protect habitat and species of local
importance." Final Decision and Order (FDO) of February 10, 2004 (03-1-
21 0003).

22 The Petitioners provided substantive science and scientific testimony as to why the
23 Red-necked Grebe should be designated as a specie of local importance and why the
24 wetlands at Loon Lake need additional protection as habitat of local importance. The
25 Petitioners followed the process outlined by the County to nominate habitats and species of

1 local importance and supported their claim with overwhelming scientific evidence. The
2 record reflects that the County failed to include best available science as required by RCW
3 36.70A.172(1).

4 The role of the BAS standard has been interpreted by the courts to require more
5 than mere "consideration" of science. BAS must substantively control the standard
6 established and must be reflected in the record:

7 Whether scientific evidence is respectable and authoritative, challenged or
8 unchallenged, controlling or of no consequence when balanced against other
9 factors, goals and evidence to be considered, it's first in the province of the
10 city or county to decide. Then, if challenged, it is for the Growth Management
11 Hearings Board to review. The Legislature has given great deference to the
12 substantive outcome of that balancing process. We hold that evidence of the
13 best available science must be included in the record and must be considered
14 substantively in the development of critical areas policies and regulations.

15 *HEAL v. Central Puget Sound Growth Management Hearings Board*; 96
16 Wn.App. 522, 979 P.2d 864 at 870, (Wash.App. Div 1, 1999).

17 In addition, a local jurisdiction is not constrained to adopt only the science
18 recognized by state or federal agencies, but a variation from formally identified BAS must
19 be supported in the record by evidence that also meets the BAS standard:

20 The science the legislative body relies on must in fact be the best available
21 science to support its policy decisions. Under the cases and statutes cited
22 above, it cannot ignore the best available science in favor of the science it
23 prefers simply because the latter supports the decision it wants to make. *Id.*,
24 96 Wn.App. at 534, 979 P.2d at 871.

25 Petitioners included in the record substantial evidence that the Red-necked Grebe
26 has a primary association with the Loon Lake wetlands. According to expert scientific
evidence, the alteration of the nominated habitat will reduce the likelihood that the species
will be able to maintain itself and reproduce. Detailed evidence was presented that the
Red-necked Grebe inhabit the nominated wetlands. Detailed evidence by the Department
of Ecology, which CTED shall consult with regarding guidelines for critical areas (RCW
36.70A.050(1)(d)), confirms that these areas are wetlands. There was little or no evidence

1 in the record to show that the Loon Lake wetlands are not breeding habitat, winter range
2 and movement corridors (WAC 365-190-030(9) for the nominated specie. With only 4% of
3 the lake left as wetlands, the County's decision fails to protect the habitat according to the
4 scientific information provided by the Petitioners.

5 There is no evidence in the Record to rebut the facts that Loon Lake's wetlands are
6 critical to its water quality and habitat for wildlife. The County denies the facts presented in
7 the record, contrary to expert opinion and science:

8 "...no scientific information was presented...that wake from recreational
9 boating is the cause of the problem...boat wakes are controlled through the
10 boating ordinance. Loon Lake's wetlands are protected by Stevens County's
11 CAO ordinance and SLMP. ...other factors beside wave action, habitat and egg
12 loss... Loon Lake is a recreational lake and further restrictions would limit the
13 amount of recreational uses the lake would support... ...and that other values
14 exist that warrant habitat or species designation."

15 Stevens County Code (SCC 13.10.031) states that:

16 "...Habitats of local importance may include a seasonal range or habitat
17 element with which a given species has a primary association, and which, if
18 altered, may reduce the likelihood that the species will maintain and
19 reproduce over the long term..."

20 The County cites the Stevens County Critical Areas Ordinance (Title 13) and the
21 Stevens County Shoreline Master program as two regulations that will prevent alteration of
22 the habitat or habitat elements, but there is no scientific evidence in the record to this effect.
23 Both regulations fall short of sufficient protection for the red-necked Grebe and Loon Lake
24 Wetlands, as the GMA requires.

25 Stevens County is required to protect habitats and species of local importance. The
26 GMA requires jurisdictions to use best available science when determining critical area
policies and regulations. The Record, including the scientific evidence, supports the
Petitioners' position regarding the Red-necked Grebe and the Loon Lake wetland as a species
and a habitat of local importance.

1 **Conclusion:**

2 The Petitioners have carried their burden of proof. By clear cogent and convincing
3 evidence they have shown that Stevens County's denial of the nominations of the Loon Lake
4 habitat as a habitat of local importance and the Red-necked Grebe as a species of local
5 importance is clearly erroneous in view of the entire record and is out of compliance. The
6 Board is left with a firm and definite conviction that a mistake has been committed by
7 Stevens County.

8 **VI. FINDINGS OF FACT**

- 9 1. On July 6, 2004, Stevens County adopted Resolution #80-2004. The
10 resolution amends Title 13, the County's Critical Areas Ordinance, to
11 comply with the Final Decision and Order issued on February 10, 2004,
12 by the Eastern Washington Growth Management Hearings Board.
- 13 2. The County received nominations to designate species and/or habitat of
14 local importance by the Petitioners.
- 15 3. The County adopted Appendix B of Title 13 as amended, as a process
16 for accepting nominations for species and habitat of local importance.
- 17 4. The County held two public hearings on January 24 and 31, 2005, to
18 accept written and verbal testimony concerning the nominations of
19 species of local importance, the Common Loon and Red-necked Grebe,
20 and habitat of local importance, the wetlands at Loon Lake.
- 21 5. The County held a "closed" final hearing on March 7, 2005, for the
22 BOCC to hear the final Staff Report, make comments, and vote to deny
23 the nominations.
- 24 6. The County adopted Findings of Facts and Resolution 41-2005 on
25 March 22, 2005.
- 26 7. The record before the Hearings Board included best available science
submitted by the Petitioners supporting the Red-necked Grebe as a

species of local importance and Loon Lake wetlands as a habitat of local importance.

8. The record is void of scientific evidence disputing the nomination of the Red-necked Grebe as a species of local importance and Loon Lake wetlands as a habitat of local importance.

VII. CONCLUSIONS OF LAW

1. The Petitioners have participation standing, pursuant to RCW 36.70A.280(2) and (4), to pursue their appeal on the issues presented to the Board.
2. Counties are required to designate and protect critical areas. RCW 36.70A.060(2) and 36.70A.170(d).
3. The definition of "critical areas" include "fish and wildlife habitat conservation areas" (FWHCA). RCW 36.70A.030(5)(c).
4. Fish and wildlife habitat conservations areas include "habitats and species of local importance". WAC 365-190-080(5)(a)(ii).
5. "Species of local importance" is defined by WAC 365-190-030(19).
6. "Habitats of local importance" is defined by WAC 365-190-030(9).
7. Counties "shall include best available science in developing policies and development regulations to protect the functions and values of critical areas." RCW 36.70A.172(1).
8. The Petitioners have carried their burden of proof and shown by the evidence in the record that the actions of Stevens County are clearly erroneous.

VIII. ORDER

1. The Board finds that Stevens County's failure to designate the Red-necked Grebe as a species of local importance and the Loon Lake wetlands as a habitat of local importance is clearly erroneous. By this

1 action, the County violated the GMA and did not properly follow the
2 requirements set forth in the therein.

- 3 2. The Board finds Stevens County out of compliance and remands
4 Resolution 41-2005 back to the Stevens County Board of County
5 Commissioners to reconsider the subject nominations.

- 6 • Stevens County must take the appropriate legislative action to bring
7 themselves into compliance with the goals and requirements of the Act
8 as so ordered by the Board by **August 1, 2005, 60 days** from the
9 date issued.
- 10 • The County shall file with the Board by **August 15 2005, an original**
11 **and four copies** of a Statement of Actions Taken to Comply (SATC)
12 with the GMA, as interpreted and set forth in this Order. The SATC shall
13 attaché copies of legislation enacted in order to comply. The County
14 shall simultaneously serve a copy of the SATC, with attachments, on
15 the parties. By this same date, the County shall file a "Remanded
16 Index," listing the procedures and materials considered in taking the
17 remand action.
- 18 • By no later than **August 29, 2005**, Petitioners shall file with the Board
19 an **original and four copies** of Comments and legal arguments on
20 the County's SATC. Petitioners shall simultaneously serve a copy of
21 their Comments and legal arguments on the parties.
- 22 • By no later than **September 12, 2005**, the County shall file with the
23 Board an **original and four copies** of the County's Response to
24 Comments and legal arguments. The County shall simultaneously serve
25 a copy of such on the parties.
- 26 • By no later than **September 19, 2005**, Petitioners shall file with the
Board an **original and four copies** of their Reply to Comments and
legal arguments. Petitioners shall serve a copy of their brief on the
parties.
- Pursuant to RCW 36.70A.330(1) the Board hereby schedules a
telephonic Compliance Hearing for **September 27, 2005, at 10:00**
a.m. The parties will call **360-709-4803 followed by 521835 and**

the # sign. Ports are reserved for Ms. Wagenman, Mr. and Mrs. Shawl, Mr. Rudisill, President Loon Lake Property Owners Association, Loon Lake Defense Fund, and Mr. Scott. If additional ports are needed please contact the Board to make arrangements.

If the County takes legislative compliance actions prior to the date set forth in this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

Pursuant to RCW 36.70A.300(5) and RCW 34.05.542(2), this is a Final Order for purposes of appeal. Any appeal of this Order shall be served in person on the Board by the 30th day. Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this Order.

SO ORDERED this 2nd day of June 2005.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

John Roskelley, Board Member

Judy Wall, Board Member

Dennis Dellwo, Board Member